

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Paul Beardow	
Serial No.:	10/500,260	Conf. No.: 9345
Filing Date:	June 15, 2004	Group Art Unit: 2628
Title:	METHOD AND APPARATUS FOR IMAGE CONSTRUCTION AND ANIMATION	Examiner: Amin, Jwalant B.
Docket No:	22557-3013	

Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, VA 22313-1450

RENEWED PETITION UNDER 37 CFR 1.10(d)

Dear Sir:

In the above-referenced matter, a Request for Correction of Filing Receipt and Notification of Acceptance of Application under 35 USC §371 (the "Request"), was first filed on September 13, 2005, and subsequently re-filed on March 28, 2006. As set forth in a Decision mailed from the USPTO on March 28, 2007 (the "Decision"), the Request has been treated as a Petition under 37 CFR 1.10(d), and has been denied for failure to satisfy the requirements of 37 CFR 1.10(d)(3).

In response, Applicant requests reconsideration in the Decision in light of the information and arguments outlined below. In conjunction, application hereby petitions for a two month extension of time to submit the present Renewed Petition (i.e. request reconsideration of the Decision), and authorizes the commissioner to charge Deposit Account 501901 for the appropriate large entity extension fee.

SUMMARY OF FACTS

The above referenced application was filed under 35 USC §371 claiming benefit of international application PCT/GB02/05609. All necessary paperwork was filed via "Express Mail" by depositing an Express Mail envelope (bearing Express Mail Label ER 946868273US and addressed to the U.S. Patent and Trademark Office) into an Express Mail drop box on June 11, 2004 at 2:40 p.m. In this case, the Express Mail Drop Box was located at the intersection of Broadway and 25th Street, New York, New York and had a listed final pick-up time of 5:00 p.m. The Patent Office acknowledges receipt of Express Mail envelope ER 946868273US on June 15, 2004.

Applicant's representative noticed that the application had been given a 35 USC §371 Filing Date of June 15, 2004. Following this discovery, the above referenced Request was filed on September 13, 2005 via facsimile. See, Statement of Facts in Support of Petition under 37 C.F.R. 1.10(d) to Accord a 371 Filing Date of 14 June 2004, signed by Robert W. J. Usher ("Statement of Robert W. J. Usher"), attached hereto. This same request was refiled on March 28, 2007. *Id.*

The deposit date of the above mentioned Express Mail Envelope, Friday, June 11, 2004, was a specially designated holiday to pay respects to former U.S. President Ronald Regan. Thus, general operations of the U.S. Postal Service were closed on that day, along with most federal offices (including the U.S. Patent and Trademark Office). As noted in handwriting by Mr. Robert Usher on correspondence from the U.S. Postal Service, an automated voice reporting service did verify that the relevant envelope was first presented for delivery on June 15, 2004 at 11:00 a.m. and successfully delivered at 11:10 a.m. of that same day. See, Attachment to Request. This appears consistent with the USPTO records indicating receipt on this date. Unfortunately, no additional information is available regarding the Express Mail Envelope identified above (See, Applicant's Request). Most significantly, the Express Mail Mailing Label has never been located, nor have any relevant billing records been found. Further, as of September 2005, tracking of this envelope was no longer possible due to the passage of time.

Since receipt of the Decision, various Applicant representatives have attempted to obtain additional information regarding the pick up and delivery practices of the United States Postal Service relative to Express Mail drop boxes and the particular Express Mail drop box used on June 11, 2004. In conversations, Applicants representative has been informed that scheduled pick-up times for any particular drop box are always the same on Monday through Friday. See, Statement of Robert W. J. Usher. Beyond this, the United States Postal Service has been unwilling to provide any additional relevant information.

REMARKS

As previously suggested, Applicant asserts that a filing date of June 14, 2004 should be accorded to the present application. The circumstances and know facts clearly suggest that employees of the U.S. Postal Service had position of the application by June 14, 2004, and possibly earlier.

As communicated by the above referenced automated voice reporting systems of the U.S. Postal Service, the Express Mail Envelope in question was delivered to the Patent Office at approximately 11:10 a.m. on Tuesday, June 15, 2004. See, Request, p. 2. Based on the established deposit date of June 11, 2004 (see, Request and Decision), the possible time period for receipt by U.S. Postal Service employees is sometime between these established dates of deposit and delivery.

In response to the Decision, Applicant's representatives have attempted to obtain information from the U. S. Postal Service regarding their practices and procedures related to collection of Express Mail deposits from Express Mail Drop Boxes. Specifically, Applicant's representatives have attempted to obtain any information possible regarding the procedures for standard pick-ups at the drop box used in this particular application. The U.S. Postal service has been unable to provide any such information. That said, the U.S. Postal Service drop box in question would have included pick-up hours on Monday, June 14th as this was a typical business day. Based on conversations between Mr. Usher and Postal Service employees, pick-ups from these boxes are consistent Monday through Friday. See, Statement of Robert W. J. Usher. As recorded in the mail log of Applicant's representative, the final listed pick-up on June 11, 2004 was 5:00 pm. See, Request. Thus, it is reasonable to conclude that, as a minimum, the drop box in question had a pick-up on Monday, June 14, 2004 at 5:00 p.m. That leads to the next logical conclusion that the U. S. Postal Service certainly had position of the envelope in question on or before June 14, 2004. As such, it is appropriate in these circumstances to accord a filing date of June 14, 2004 to the present application.

Should a telephone conference be deemed necessary, or should additional information be needed, Applicant requests the Commissioner to contact the undersigned at the telephone number listed.

Respectfully submitted,

By: 

Craig J. Lervick, Reg. No. 35,244
Customer No. 34205
Oppenheimer Wolff & Donnelly LLP
45 South Seventh Street, Suite 3300
Minneapolis, MN 55402
Telephone: (612) 607-7387
Facsimile: (612) 607-7100

Attachments

Application no: 10/500,260
Filed 11 December 2002
Inventor; Beardow
Assignee Superscape

Statement of Facts in Support of Petition under 37 C.f.r. 1.10(d) to Accord
a 371 Filing Date of 14 June 2004


The undersigned confirms that the papers filed on 30 March, 2006 are true copies of papers that the undersigned transmitted to the Patent Office by facsimile on 13 September 2005.

As further evidence of actual receipt of such papers by the USPTO a copy of the 'Activity Report' of the same facsimile machine used to transmit the papers is attached. In the Report, item 084 shows transmission on 9/13/2005 at time 18.48 to fax 7033059822, duration 2:24 min, 8 pages, result OK, Comment TX, transmission mode ECM (Error Checking Mode - proving actual receipt as a correct bit count must be received by the transmitting fax. from the receiving fax for a TX, OK status).

In a conversation with the undersigned on 27 July 2007, a USPS mail carrier (Shawn) who said that he serviced the said Express Mail drop box located on Broadway @ 25th Street, confirmed that the box had always had pick - ups on Monday-Friday.

In another conversation with the undersigned, on a separate occasion, a USPS representative confirmed that the scheduled pick up times for any particular Express Mail box were always the same for each day of Monday-Friday.

Respectfully submitted:


/Robert W. J. Usher/
Robert W. J. Usher

Reg 30923 Customer 004518
(212) 633-1076

ACTIVITY REPORT

TIME : 09/19/2005 07:00
 NAME : ROBERT USHER
 FAX : 2126338527
 TEL : 2126338527
 SER.# : BROK1J669184

NO.	DATE	TIME	FAX NO./NAME	DURATION	PAGE(S)	RESULT	COMMENT
#083	09/12	21:24	[REDACTED]	27	01	OK	RX ECM
	09/13	04:20		45	03	OK	RX ECM
	09/13	04:32		45	01	OK	RX ECM
#084	09/13	10:43	17033059822	24	01	OK	RX ECM
	09/13	16:33		27	00	OK	RX ECM
	09/13	18:48		02:24	08	OK	RX ECM
#085	09/14	08:13	[REDACTED]	30	02	OK	RX ECM
#086	09/14	10:16		34	02	OK	RX ECM
#087	09/14	10:46		01:17	04	OK	RX ECM
#089	09/14	11:44		46	01	OK	RX ECM
#092	09/14	16:06		18	00	CANCEL	RX ECM
#093	09/14	16:09		16	00	CANCEL	RX ECM
	09/14	16:10		15:21	41	OK	RX ECM
	09/14	16:26		38	01	OK	RX ECM
	09/14	16:27		32	00	OK	RX ECM
	09/14	16:35		57	01	OK	RX ECM
#094	09/15	11:57	[REDACTED]	04:21	16	OK	RX ECM
#095	09/15	18:04		21	01	OK	RX ECM
#096	09/15	18:16		19	01	OK	RX ECM
	09/15	18:38		21	01	OK	RX ECM
	09/15	20:40		01:08	01	OK	RX ECM
	09/18	13:55	[REDACTED]	28	01	OK	RX ECM

BUSY: BUSY/NO RESPONSE
 NG : POOR LINE CONDITION / OUT OF MEMORY
 CV : COVERPAGE
 POL : POLLING
 RET : RETRIEVAL
 PC : PC-FAX